(Testimony of Henry Lester Pineda.)

Q. Would anyone else?

A. No, not in this case. [726]

Q. If the Government stamp was on the label what would you do?

Mr. Faulkner: These are all suppositions. He is supposed to be chronicling what he did at a particular time. We have five questions—and supposing it was here.

Mr. Hippeli: Q. Was a Government stamp on any of the labels at that time?

A. Yes.

Q. What did you do with that stamp?

A. I buffed it off with a buffer.

Q. When it was on the label?

A. When it was on the label and when it was on the cleat.

Q. Did you have any conversation with Mr. Goddard as to what were to be done with those particular cases?

A. Yes, he told me to make sure——

Mr. Faulkner: Just a moment, please. He said yes. Now, the time, place and persons present.

Mr. Hippeli: Q. At what time? Is it the same time you have been talking about?

A. Yes.

Mr. Faulkner: That is leading and suggestive.

The Court: He is entitled to the time, place and persons present of any conversation had with any of these defendants.

Mr. Hippeli: Q. About what time was that?

A. That was about 5 o'clock, just about when he

(Testimony of Henry Lester Pineda.)

told me to wait until the girls left to go home. It was about 4.30. About 5 o'clock I started working and he came over and told me to make sure that no scrapings went into the cases of eggs. [727]

Q. Was anything else said?

A. No, he said make sure it was done right because Mr. Moosman would inspect them the following day.

Mr. Faulkner: I can't hear the witness.

The Witness: Make sure the scrapings wouldn't go into the cases of eggs so Mr. Moosman would not find any of it in the cases of eggs. They were going to be inspected again the following day.

Mr. Hippeli: Q. Who is Mr. Moosman?

A. He is the State—the Department of Agriculture inspector.

Q. Do you know whether or not this particular lot of eggs was inspected by a Government inspector? A. Yes.

Q. When? A. The following day.

Q. Who was present at that time?

A. Well, I couldn't tell you who was present at the time of the inspection, but the following day I had to repeat what I had done the night before.

Mr. Faulkner: We ask that that go out as not responsive.

The Court: It may go out. The Jury will disregard it.

Mr. Hippéli: Q. Did you see the United States Department of Agriculture inspector inspecting and stamping those cases?

(Testimony of Henry Lester Pineda.)

A. No, I didn't see him.

Q. After you buffed a United States Department of Agriculture stamp off those cases did you again observe a United States Department of Agriculture stamp on those cases? A. Yes.

Q. When with respect to the time at which you buffed the stamp [728] off?

A. The following day.

Q. What if anything was done with respect to the stamp that appeared on the same cases of eggs the second time? A. Well, I buffed them.

Q. Did anyone tell you to buff it off?

A. Mr. Goddard.

Q. Do you know how often that same lot of eggs was resubmitted for Government inspection?

Mr. Faulkner: He has not testified at all that it was ever submitted to Government inspection. He merely buffed a stamp.

The Court: The objection will be sustained.

Mr. Hippelli: Q. Do you know how often you observed a United States Department of Agriculture stamp on that lot of eggs?

A. About three times.

The Court: We will take a recess for a few minutes. The jurors may be excused.

(Recess.) [729]

Mr. Hippeli: Q. On the evening in the first part in 1942, the first occasion that you testified to where you were scraping labels off of cases of eggs, I will ask you if at that time you observed

(Testimony of Henry Lester Gaeda.)

another lot of eggs on the main floor of the Nye & Nissen plant.

A. Yes. They had another lot, the same type of eggs that was in the middle of the plant.

Q. Were the number of cases in the two lots about the same? A. Yes.

Q. Do you know if the grade of eggs contained in the two lots of eggs were the same?

A. No, they were not.

Mr. Faulkner: We object to that as calling for an opinion and conclusion of the witness, because he could not know, unless he candled them, anything about the grade.

Mr. Hippeli: The question was not what the grades were. Were the grades the same?

Mr. Faulkner: He couldn't know unless he candled the eggs.

The Court: If he knows he may answer.

Mr. Faulkner: Exception; upon the ground that calls for an opinion and conclusion of the witness.

The Witness: No, they were not.

Mr. Faulkner: If a man expert in the field of egg candling—this witness hasn't shown any qualification in that field, at all. No foundation is laid that he ever saw the eggs or inspected the eggs in any shape, manner or form. [730]

The Court: You might lay a better foundation for the question.

Mr. Hippeli: Q. Did you observe any markings on the two lots of eggs, the cases which were in the two lots of eggs?

(Testimony of Henry Lester Pineda.)

A. Yes, they had initials on the cases of eggs.

Mr. Faulkner: I cannot follow the witness.

The Court: Read the answer.

(Record read.)

The Witness: We had initials on the cases of eggs that I buffed.

Mr. Hippeli: Q. Were there any markings on the lot of eggs that you did not buff?

A. No.

Q. Did the fact that initials were on one lot and no markings were on the other indicate anything to you as to the standard of eggs contained in the two lots?

Mr. Faulkner: We object to that as hearsay as to the defendants.

The Court: Develop the facts or I will sustain the objection.

Mr. Hippeli: Q. Did you observe the conduct of any of the defendants with respect to the lot of eggs which you did not buff? A. Yes.

Q. Which defendant? A. Mr. Goddard

Q. What was he doing?

Mr. Faulkner: At what time? [731]

Mr. Hippeli: We fixed the time.

The Witness: It was about 5:30 or 5:00 o'clock; from 5:00 to 5:30 that night.

Mr. Faulkner: What year?

Mr. Hippeli: What year?

The Witness: It was the first part of 1942.

Q. Will you tell us what Mr. Goddard was doing with respect to the cases of eggs?

(Testimony of Henry Lester Pineda.)

A. He was stamping up the cases of eggs.

Q. With what type of a stamp?

A. That was the same lot of stamps that I had been scraping off the cases of eggs.

Q. He was placing those stamps on the lot which didn't bear a stamp? A. Yes.

Q. You were removing the stamps from that second lot which did bear a stamp? A. Yes.

Q. Were the stamps on both lots similar?

A. Yes.

Q. What is meant by switching or transferring of eggs?

A. When you transfer a case of eggs you take the case of eggs out and place them in a different case.

Q. Do you mean you take the case of eggs out, or the eggs out?

A. Take the contents of a case of eggs and place them in a different case.

Q. Did you ever observe any eggs being transferred from one case to another during the period of your employment at Nye & Nissen's?

A. Yes, quite a few times.

Q. Do you recall whether or not the cases from which eggs were [732] transferred bore any stamp?

A. Yes.

Q. Do you recall what the stamp was?

A. Well, a lot of times they bore Department of Agriculture stamp and a lot of times they bore the U. S. Army stamp.

Q. Did you ever observe any of the defendants transferring eggs? A. Yes.

(Testimony of Henry Lester Pineda.)

Q. Will you select an occasion on which you observed some of the defendants transferring eggs?

A. Well, about all the time I was working there, but in about 1941, about November, I guess.

Q. Where was this?

A. At 324 Townsend.

Q. Who was present?

A. Mr. Moncharsh, Mr. Goddard, Mr. Menges, Mr. Berman and myself.

Q. Was anyone else present?

A. Mr. Nix.

Q. Were any of the girls there?

A. Yes, the girls——

Q. Which girls, to whom do you refer?

A. Well, Mary——

Q. By "girls" do you refer to the candlers?

A. Yes, the candlers.

Q. Was any conversation had on this occasion?

Mr. Faulkner: He has not fixed the girls yet. He was about to and you stopped him.

Mr. Hippeli: Q. Do you recall the names of the girls?

A. Yes. There was Mary Baeigalupi, Juanita, I don't recall her last name.

Q. Do you recall anyone else?

A. Then there was Violet and [733] Elinor.

Q. Do you recall their last names?

A. I think Violet McGuinn; I don't remember Elinor's last name.

Q. Was any conversation had on this occasion?

(Testimony of Henry Lester Pineda.)

A. We were supposed to transfer the eggs after supper.

Mr. Faulkner: We ask that go out.

Mr. Hippeli: Q. Was there a conversation?

A. Yes.

Q. Will you tell us what the conversation was and what was done.

Mr. Faulkner: We object to that until the persons who were at that conversation are fixed, and where this occurred. It is a plant possibly 240 feet long, your Honor, a full block.

Mr. Hippeli: Q. Are all the people whom you have just named present in a small location, in one vicinity?

A. Well, it was Mr. Nix, Mr. Menges, Mr. Goddard and myself, outside the candling room on the bench.

Q. That was on the evening referred to?

A. Yes.

Q. Was there a conversation between these various parties?

A. Mr. Goddard was telling us to go to supper that night and we would transfer eggs after supper, when we came back.

Q. When you returned after supper, did you return after supper? A. Yes.

Q. When you returned after supper to what part of the plant did you go?

A. We went back to the candling room.

Q. Who was present at that time?

A. There was Mr. Menges, [733] Mr. Nix, Mr.

(Testimony of Henry Lester Pineda.)

Goddard, myself and Mr. Moncharsh and Mr. Berman.

Q. Will you tell us what was done and by whom whatever was done was done?

A. Mr. Menges and myself, we got the case of eggs that bore a Government stamp and placed them outside the lot.

Q. Where were the cases of eggs?

A. They were right outside the candling room. We had about two flats of them. We opened up the tops and placed them on top of the bench. The girls were inside, they were back then, they pushed the cases in and we gave them a case of cut-outs alongside the case of stamped and they transferred the stamped cases into another case and the cut-out cases into the stamped cases.

Q. What was done with the cut-outs which were placed in the stamped cases then?

A. The cases were pushed out to us and we put the full covers on and placed them on the flats.

Q. Did you observe the conduct of Mr. Moncharsh?

A. Mr. Moncharsh and Mr. Berman were there. They were going to give us a hand.

Q. Where were they?

A. They were outside right next to us, outside the candling bench. So they started transferring some cases of eggs, they transferred about two cases, and then they sort of kept bumping into each other, so they stopped and helped us put the covers on.

(Testimony of Henry Lester Pineda.)

Q. When they were transferring cases of eggs what cases would they have before them?

A. A stamped case and an empty [735] case and case of cut-outs.

Q. What would they do with the cases?

A. They put the stamped cases into the empty cases and then the cut-out cases into the stamped cases.

Q. What happened to the stamped cases?

A. I would place the same lot that the girls were showing out on their stamped cases.

Q. The cut-outs which were placed in the stamped cases, were any of those cases placed on the trucks at that time?

A. Yes, I believe—I know Mr. Goddard—when we had a full tray of stamped cases of eggs, of cut-outs, we would take them about 20 feet from the candling room and Mr. Goddard would be there up toward the truck.

Q. Did you have any conversation with Mr. Goddard concerning the delivery of those trucks?

A. He told me to come in early the next day, I would help him deliver.

Q. What did you do? What did you do the next day? A. Yes.

Q. Did you deliver them the next day?

A. Yes.

Q. Where? A. Down to the waterfront.

Q. Do you recall what pier?

A. I don't recall.

Q. Did the cases that you delivered the next day bear a stamp? A. Yes.

(Testimony of Henry Lester Pineda.)

Q. During the period of your employment at Nye & Nissen did you ever wire-strap cases of eggs? A. Yes.

Q. Under what purchase orders?

A. Mostly it was under [736] Army orders.

Q. Do you ever recall having broken a wire strap on a case of eggs? A. Yes.

Q. Was that ever done in the presence of any of the defendants? A. Yes, it was.

Q. How often?

Mr. Faulkner: We ask the time and place and persons present be fixed on this occasion, your Honor.

Mr. Hippeli: I withdraw the question.

Q. Will you select an occasion on which the defendants were present during the breaking of a wire-strapped case of eggs?

A. It would be about two months before this first incident; it would be about, maybe about August of 1941.

Q. Where? A. Nye & Nissen plant.

Q. Which plant? A. 324 Townsend.

Q. Who was present on this occasion?

A. Mr. Goddard and Mr. Moncharsh, Mr. Menges and myself, and Mr. Nix.

Q. Was Mr. Berman there?

A. Yes, he came later on in the day.

Q. Was there a lot of eggs present?

A. Yes.

Q. Did this lot of eggs bear a Government stamp?

(Testimony of Henry Lester Cuneda.)

A. Yes; it had been inspected by a Government man, or an Army officer.

Q. Did it bear an Army stamp? A. Yes.

Q. Were these cases of eggs wire-strapped?

A. Yes, they were.

Q. Did any of the defendants do anything with respect to this lot [737] of eggs? A. Yes.

Q. Will you tell us what they did?

A. We were told to go to—Mr. Goddard told Mr. Menges and myself to go to supper that night and we would have to transfer eggs. So we went to supper and came back about six, five-thirty or six.

Q. When you came back from supper who was there?

A. Mr. Goddard, Mr. Berman, Mr. Nix and Mr. Menges.

Q. Was Mr. Moncharsh present?

A. He came down later on.

Q. What happened then?

A. And the girls, three of the girls, I think, went for supper that night. We transferred—broke the wiring and put the eggs in the stamped cases of eggs in another case and put cut-outs in the stamped cases.

Q. Did you re-wire them? A. Yes.

Q. Did Mr. Moncharsh do this?

A. Yes, he came down for a while. It took a lot of time to wire, to re-wire, and he gave us a hand.

Q. Did Mr. Goddard do it? A. Yes.

(Testimony of Henry Lester Pineda.)

Q. Mr. Berman? A. Yes.

Q. Mr. Menges? A. Yes.

Q. Were there any Government inspectors present on this occasion? A. No.

Q. Were these cases of eggs re-wired?

A. Yes.

Q. Do you know whether these cases were re-inspected at any time at the plant?

Mr. Faulkner: He is not qualified—— [738]

The Witness: At the plant, no.

Mr. Faulkner: (Continuing): ——to know whether they were re-inspected. The Army regulations require the inspection at the point of delivery.

Mr. Hippeli: My question was whether he knew if this lot of eggs was ever re-inspected at the plant.

The Court: He may answer. Overruled.

Mr. Faulkner: Exception.

The Witness: No, they were not re-inspected at the plant.

Q. (By Mr. Hippeli): Do you know of any occasion on which eggs will have been transferred when a Government inspector will be present?

A. Not from a stamped case, no.

Q. "By a "stamped case," you mean a case bearing a U. S. Department of Agriculture stamp, or a Veterinary Corps stamp? A. Yes.

Q. Do you recall the delivery of a lot of eggs to the Army at Merchants Ice & Cold Storage Company? A. Yes.

Q. Where is Merchants Ice & Cold Storage Company?

(Testimony of Henry Lester Funda.)

A. That is about around Pier 25, or 23, about there.

Q. Is it in San Francisco? A. Yes.

Q. What was the time of this delivery?

A. It was on a Saturday afternoon, around January, 1940.

Q. Where were you?

A. I was at Nye & Nissen's plant, ready to go home.

Q. Who was present?

A. Mr. Goddard and myself and Mr. Moncharsh was there. [739]

Q. Was there any conversation had at that time?

A. Yes.

Q. What was said?

A. Mr. Goddard told me I—I used to go and play ball on Saturday afternoon. He told me I wouldn't be able to play that day, that they had been caught red-handed on some cases of eggs that were delivered and inspected by the Army, and I had to go down and give them a hand.

Q. Did he say where they were?

A. At Merchants.

Q. What did he say?

A. He said I had to go down and give them a hand. Whenever you mark and stamp the wiring mark that these cases bore—you could see they had been rewired, and the Government men were going to see these rewiring marks that the cases had left.

Q. What was done then?

A. Mr. Smith gave Mr. Bergan and I a ride

(Testimony of Henry Lester Pineda.)

down to the Merchants Ice and there we met Mr. Berman and Joe Barfield—I forget his last name.

Mr. Hippeli: May I spell it for the reporter?

Mr. Faulkner: No, you are not the witness. We object to that.

The Court: What was the name?

The Witness: Joe—down there we called each other by our first names. I think it was Barfeld, or Barfield.

The Court: Can you spell it?

A. No.

Mr. Hippeli: Q. Who was present down at Merchants Ice & Cold Storage Company?

A. We met Joe and Henry Berman there. [740]

Q. Who was with you?

A. Mr. Goddard and Mr. Smith.

Q. Was anybody else present there?

A. Yes, they had Army officers there.

Q. What was done there?

A. The Army men were inspecting cases of eggs, and were pretty angry, and so then Smith stayed outside and talked to them while Mr. Goddard and I went into the cooler where the eggs were, and Mr. Goddard got on top of the cases of eggs and sort of rubs his shoes on them wherever there was a mark from any wires.

Q. What do you mean by "mark of any wire"?

A. When you wire cases of eggs you sort of leave the imprint of a wire there, and if you re-wire the cases of eggs the first wiring marks are left on the cases of eggs.

(Testimony of Henry Lester Pineda.)

Q. What was Mr. Goddard doing with respect to the wiring markings?

A. He was trying to rub them out.

Q. How? A. With his shoes.

Q. What did he tell you to do?

A. To do the same thing, to get on top of this pile of eggs that was to be inspected and do the same thing, because the Army men were inspecting the eggs that bore wire marks besides the new wiring.

Q. Do your recall whether these were new or old cases? A. These were new cases.

Q. Do you recall approximately how many cases of eggs were rejected at that time?

A. About from 125 to 150.

Q. How many cases were in the lot?

A. I don't recall the exact [741] amount, but I would say about close to a thousand.

Q. What occured when you were leaving the plant of Merchants Ice & Cold Storage Company?

A. Mr. Smith and the lieutenant—the lieutenant told Mr. Smith——

Mr. Faulkner: Objected to as hearsay as to the remaining defendants.

Mr. Hippeli: Except the corporation.

The Court: Sustain the objection.

Mr. Hippeli: Q. While you were riding to the Merchants Ice & Cold Storage Company did you hear any conversation? A. Yes.

Q. Between whom?

A. Well, one between Goddard and myself.

(Testimony of Henry Lester Pineda.)

Q. What was said at that conversation?

A. Mr. Goddard told me, he said, "You should have seen all the cases they didn't inspect."

Q. Who didn't inspect?

A. The Government men.

Q. Did you hear a conversation by Mr. Smith?

A. Yes.

Q. Was anyone else present at that conversation? A. Mr. Goddard and myself.

Q. What was said at that time?

A. Mr. Smith wanted——

Mr. Faulkner: Some objection, your Honor.

The Court: I will allow it; overruled.

Mr. Faulkner: Hearsay as to the defendants.

The Court: As to what defendant?

Mr. Faulkner: The defendants on trial.

The Court: One of the defendants was present.

Mr. Faulkner: That conversation, to be admissible against him, must be a conversation where it would be a burden—the mere presence when other people talk does not bind a person. It is only when they talk in a manner where he has the burden to speak out that it is admissible.

The Court: I will allow the conversation.

Mr. Faulkner: Exception.

The Witness: Mr. Smith wanted us to replace a case of eggs without any slip showing in the icehouse that the eggs were taken out. The icehouse man said if the eggs were to be taken out that night and another case brought in the following morning he would have to show the cases were taken out.

(Testimony of Henry Lester Pineda.)

Mr. Hippeli: Q. Did Mr. Goddard say anything at that time? A. No.

Q. During the period of your employment with Nye & Nissen, who had charge of the butter room?

A. Mr. Nix.

Q. Did you ever have charge of the butter room?

A. Well, when Mr. Nix was out on some delivery or after he quit, something like that, I would have.

Q. Do you recall any occasion on which an Army inspector inspected butter? A. Yes.

Q. What was that time?

A. About February, 1942.

Q. Where was it? A. 324 Townsend.

Q. Who was present at that time?

A. During the inspection it was Colonel Hand, Mr. Menges, Mr. Goddard and myself. [743]

Q. Did you have any conversation with Mr. Goddard with respect to the inspection of the butter?

A. Yes. He——

Q. What was that conversation?

A. Mr. Goddard told me to go to the cooler and take out certain sample churns for the inspectors, so they could score the butter and see what they wanted.

Q. What did you do?

A. I took out a churn number, one cube of every churn that he had ordered me to take out. I put it out for the inspectors.

Q. What was done then?

A. The Government men scored the butter.

(Testimony of Henry Lester Pineda.)

Q. What Government men?

A. Mr. Hand and his asistants.

Q. What did they do?

A. They scored the butter. They rejected certain churn numbers and certain ones they accepted.

Q. What was done with the churn numbers which they rejected?

A. They were set aside.

Q. Where were they set aside, if you recall?

A. They were just placed outside the cooler where we had the butter.

Q. What was done with the churns which the Army inspectors accepted?

A. When I say "churn," it was just one cube. So I had to go to the cooler and take out all the churn numbers of that number and then they took that——

Q. Did you do that then?

A. Yes, I took out all the churn numbers that the Government wanted and placed them on different trays, and what ones was rejected I put on two other trays. [744]

Q. When was the butter cut?

A. The following day.

Q. Who was present at that time?

A. When the butter was being cut Colonel Hand came in for a while, and he had his assistants there. Then there was Mr. Menges and Mr. Goddard and myself.

Q. Was there any butter cut prior to the arrival of Colonel Hand? A. Yes.

(Testimony of Henry Lester Pineda.)

Q. Do you recall about what time of the morning they arrived?

A. I believe Colonel Hand came 8 to 8:30.

Q. When did he come on this day?

A. On this day from 8 to 8:30.

Q. Was there any Government inspector present at the plant prior to that time? A. No.

Q. On this day? A. No.

Q. Prior to the arrival of Colonel Hand what did you and any of the defendants do with respect to cutting the butter?

A. We cut the butter that had been rejected——

Mr. Faulkner: That is a vague and too general question. What did he do and what did any defendants do. What he did is not binding on anyone unless in the presence of a defendant.

Mr. Hippeli: I will reframe it.

Q. On the day about which you are testifying, before the arrival of Colonel Hand, around about eight o'clock in the morning, what did you observe any of the defendants do, or what did you do at the instruction of any of the defendants, with respect to the cutting of the butter? [745]

Mr. Faulkner: We will object to that as a compound question.

The Court: Who was present at eight o'clock that morning?

A. It was seven o'clock. Mr. Goddard, and myself, and Mr. Menges, and the girls who wrapped the butter when it was cut.

The Court: What was done?

(Testimony of Henry Lester Pineda.)

The Witness: A. Mr. Goddard told me to get the rejected butter and place it in the room and cut it.

Q. What did you do?

A. I pushed the butter through the tray and one of the girls cut it, and we placed it in 30-pound cubes. Then it was placed, one tray was placed on the floor. The other tray was placed inside the cooler. About eight o'clock, when Colonel Hand came, we had about six or seven cubes that we had finished cutting, so we set these aside in the butter room and took the butter that Colonel Hand had O.K.'d for the butter for the order and started to cut that.

Q. Who was present when you started cutting the butter which Colonel Hand had approved?

A. Colonel Hand, and I believe he had two assistants that day, Mr. Goddard, Mr. Menges and myself.

Q. Did you receive any instructions from any of the defendants as to the manner in which the approved butter was to be cut?

A. Yes. Mr. Goddard told me to cut the churn.

Q. Did he tell you how short to cut it?

A. Yes, he said each cube one ounce—nor more than an ounce for each pound of butter.

Q. Will you explain how that particular lot was cut.

A. Colonel Hand left his man there to stay with us to make sure we just cut the churns he ordered and make sure the weight was right. The man—

(Testimony of Henry Lester Pineda.)

after we had cut the butter and put it in 30-pound containers this man had to stamp the box. While he was stamping the boxes I would be cutting the butter short, and he would come over to where I am, where I am cutting the butter. I would raise up and make it just right, and then when he would go and look at the church I would cut it short again.

Q. Will you described how you were cutting the butter short?

A. To cut the butter, all you have to do is turn a little lever they have—they have a little wheel—with your right hand. That would cut it the right amount.

Q. Where is that wheel?

A. Right at the top, at the corner of the butter machine.

Q. Will you describe the butter machine?

A. The butter machine is about four feet long and it has a worm—the worm is about from five inches to about eight inches—five inches wide and eight inches long.

Q. What is a worm?

A. A worm is a sort of a wheel that turns around inside the butter. Put a big piece of butter, turn it [747] around, and it comes out in two-pounders.

Q. How did you put the butter through the machine that day? Explain how it comes down the line, and goes through the machine.

A. It comes in about 68 pounds, and we put it on what we call a pre-cut machine. That machine cuts it into nine pieces. And then there is a man

(Testimony of Henry Lester Pineda.)

in front that places one of these nine pieces into a worm. It is just about the size of the worm. Then the man who is cutting it pulls the lever down and the butter comes out in two-pounders. If you want a one-pounder you put a wire at the mouth of the machine which makes one-pounders.

Q. How do you regulate the weight of the butter?

A. The wheel is right where the butter is coming out.

Q. By turning the wheel one way you can increase the weight, and by turning it the other way, you decrease the weight?

A. If you turn it to the right it decreases; if you turn it to the left it opens the mouth a little more and increases the weight.

Q. How do you determine the weight of the cubes that are being cut?

A. They come out—it is usually two pounds. It is two pounds and it is about four pounds long, and we have wires where we cut the two pounds. The four pounds we cut in half to make two pounds. The wire cutting crossways cuts the four pounders into two pounders.

Q. Where is the scale?

A. Right where you are cutting the butter. [748]

Q. How close to the outlet of the butter machine?

A. About two feet and a half, I would say.

Q. Can you reach it from your position when you are regulating the blade? A. Yes.

(Testimony of Henry Lester Pineda.)

Q. When butter comes out of the nozzle after having been cut, what is done with it?

A. We spot-weigh it. I would say we weigh about every ten cuts.

Q. Will you describe that process?

A. When the butter is coming out you press the lever down here. When you press it down the butter comes out. When you raise it, it stops. Then you have this other part of the machine that cuts it into one-pounders. You take two pounds at a time. You have a scale with a two-pound weight on it. You place the two pounds on the opposite side, and if it balances in the middle it is just two pounds.

Q. How were you weighing the butter on that particular day?

A. They said I was to cut it two ounces short.

Q. How often would you weigh the butter as it comes out of the machine?

A. About every ten cuts, every five, it all depends. It all depends how the butter is coming out. A lot of times it is too liquidy, too much liquid in it, and we weigh more often.

Q. You weigh about every ten prints to determine that? A. Yes.

Q. After it is weighed how does it proceed along? [749]

A. It goes on a belt, girls pick it up, and wrap it up, and as soon as they wrap it they put it back on the belt and it goes to the end, where they have

(Testimony of Henry Lester Pineda.)

a girl with these cartons, and she puts them in these cartons.

Q. What was the size of the cartons on those days? A. Thirty-pounders.

Q. How many prints would go into a 30-pound carton? A. 30.

Q. Were the cartons weighed? A. No.

Q. The only weighing of the process is the weighing of the individual prints as they come out of the butter machine. Was Mr. Goddard present while you were cutting the butter? A. Yes.

Q. Did you so cut it at his direction?

A. Yes.

Q. Did Mr. Goddard give you any instructions about the Army inspector?

A. Yes, he told me to cut it short while the inspector was around, and when he would go to some other—I mean to cut it right when he was there, and when he would go to some other part of the room to cut it short.

Q. What do you mean by "right?"

A. Two pounds to each block.

Q. What was the Army inspector doing when you were short-cutting butter?

A. He would have some cases to stamp, watch and see we took the right churns. Mr. Hand gave him a list of churns he did not want cut. Make sure we didn't place any of those on it.

Q. Did the Army inspector present check your weighing at any [750] time? A. Yes.

(Testimony of Henry Lester Pineda.)

Q. How frequently would they check your weight?

A. Oh, he would come about every half hour or so and take a look to see that. I put a couple of blocks up there. If they weighed right he would walk away.

Q. What would you do when the Army inspector approached to watch the weighing?

A. I would raise it so the weight would be exact.

Q. Did the Army inspector ever weigh them, himself, on this day? A. No.

Q. He watched you weigh them, is that correct?

A. Sometimes if I didn't place it—weigh it often enough, he would ask me, if he was standing by, he would ask me to put two pounds on.

Q. On the morning when you started cutting this butter in the presence of the Army inspector, did you hear any conversation between Mr. Goddard and the inspector? A. No.

Q. Was the Army inspector present all during the morning, or did he leave the plant?

A. By "Army inspector" I do not mean Colonel Hand.

Q. I mean the one that was there.

A. Yes, he left—Mr. Goddard told him we were going to cut some butter for our own use, and would he mind, if he wanted to go to have breakfast it was all right, because we were going to cut butter for our own use. [751]

Q. Did the Army inspector leave?

(Testimony of Henry Lester Pineda.)

A. Yes, he left for about fifteen or twenty minutes.

Q. What was done in his absence?

Mr. Faulkner: By whom and in whose presence, please?

Mr. Hippeli: Q. When the Army inspector left who was present?

A. Mr. Menges, Mr. Goddard and myself.

Q. What was done?

A. Well, we put on the tray some of this butter we had cut this morning before the inspectors came.

Q. Was that rejected butter?

A. The rejected butter. We had about six or seven cubes still in the butter room that we cut and placed in these cartons all the time we were cutting this butter, when the inspector would come over and watch me while I was cutting it——

Mr. Faulkner: This is not in response to the question.

Mr. Hippeli: Q. The inspector had left. What was done in the inspector's absence?

A. We cut the butter he had rejected the first time.

Q. Who did that?

Mr. Faulkner: There is no evidence of any butter being rejected, your Honor, that this inspector rejected.

The Court: There was some testimony——

Mr. Faulkner: That was Colonel Hand, but

(Testimony of Henry Lester Pineda.)

this is not Colonel Hand. He specifically said it was not Colonel Hand.

Mr. Hippeli: This is the inspector who came down with Colonel Hand on the morning about which we are talking. [752]

The Court: Read the question.

(Question read.)

The Court: You may answer.

A. We cut the rejected butter we had still left in the room.

The Court: Q. Who did that? A. I did.

Mr. Hippeli: Q. Did anyone else do it?

A. Yes, Mr. Goddard and Mr. Menges.

Q. Who told you to do it?

A. Mr. Goddard.

Q. After the rejected butter was cut what was done with it?

A. It was placed on the tray where we were placing this Government butter.

Q. Was it placed in a case?

A. In a 30-pound carton.

Q. Was it placed in the same class of carton in which you were placing the butter that was being inspected by the Army inspectors? A. Yes.

Q. After the Army inspector returned what was done with respect to this rejected butter that you had cut during his absence?

A. This was on the same tray his butter was on, and Mr. Goddard told him that the order was

(Testimony of Henry Lester Pineda.)

not as big as we thought it was, so we kept cutting his butter.

Q. Did Mr. Goddard tell the Army inspector anything with respect to the stamping of any cases?

A. Yes. Well, he told him that there were still some cartons there that were not stamped, for him to stamp them up.

Q. Did the Army inspector stamp them?

A. Yes, he did. [753]

Q. Did he stamp cases which contained rejected butter? A. Yes.

Q. Did he stamp cases which contained the butter which had been accepted? A. Yes.

Q. Do you recall if Mr. Nix was present at any time during this cutting operation?

A. I am not sure about Mr. Nix.

Q. On this particular day you are not sure about him? A. I am not sure about him.

Q. During the time you were cutting butter in the presence of the Army inspector, did you submit any one-pound prints to that inspector for weighing which actually weighed 16 ounces?

A. Yes. Well, not one-pound prints, two-pound prints.

Q. Two one-pound prints?

A. Yes, two one-pound prints.

Q. How did you do that?

A. Well, when he was standing right behind me I would get the two one-pound prints and put it on the scale and he would just watch. He would never handle it.

(Testimony of Henry Lester Pineda.)

Q. How many one-pound prints actually weighing 16 ounces would be cut while the inspector was standing there?

A. How many prints? I would say about 30 pounds.

Q. How much did the remainder of the cut weigh?

A. The remaining would weigh about 15 ounces to a pound.

Q. How large was this particular cut?

A. From about eight to ten thousand pounds.

Q. Who delivered it, do you know?

A. No, I don't.

Q. How often was this done?

A. This was done from—— 754]

Mr. Faulkner: How often was what done? We object to that as too general.

The Witness: Every time——

Mr. Faulkner: Just a moment, please. Unless the time, place and persons present are fixed, your Honor, we object to a question like that as incompetent, irrelevant, and immaterial.

The Court: The objection is sustained.

Mr. Pratt: I submit that that answer should stand as he made it.

Mr. Faulkner: We ask that it go out if he gave an answer.

The Court: Read the question and any answer that was given.

(Record read.)

(Testimony of Henry Lester Pineda.)

The Court: The question and answer may go out and I will sustain the objection.

Mr. Hippeli: That is all.

Cross-Examination

Mr. Faulkner: Q. Mr. Pineda, this occasion that you have just accounted about the cutting of butter in that butter room was in what year?

A. 1942.

Q. And what was the order for? What was the order that you were cutting for? What did it call for?

A. It called for one-pound prints of butter.

Q. What kind of butter?

A. What do you mean what kind of butter? What score butter?

Q. Yes. A. I don't remember the score?

Q. Was it Grade A butter?

A. They don't run it Grade A.

Q. Grade B butter?

A. They go 90 score, 92 score, 93 score.

Q. What is your best recollection of the type of butter that it was? A. I don't recall.

Q. Do you know whether it was the lowest grade butter that was being handled in the plant of Nye & Nissen, or not?

A. No, it was not the lowest grade.

Q. Do you know what score butter was being handled in the plant of Nye & Nissen on this date in 1942?

A. Yes, we had 92 score butter.

(Testimony of Henry Lester Pineda.)

Q. Did you have 91 score butter?

A. Yes, we did.

Q. Did you have 90 score butter? A. Yes.

Q. Now, you say Colonel Hand examined some butter, is that right? A. That is right.

Q. So there will be no mistake, Colonel Hand is the man sitting there (indicating)?

A. That is right.

Q. What was his rank at that time?

A. I think he was a major then. I'm quite sure. He wasn't a colonel.

Q. It was a time when he was a major?

A. Either a lieutenant or a major.

Q. A what?

A. I think he was a major. I'm not sure.

Q. Did he have a maple leaf on his uniform?

A. I don't remember.

Q. Was he in uniform? A. Yes.

Q. What was the month in 1942 of this occurrence? A. In February. [756]

Q. February? A. Yes.

Q. The early part of February?

A. This was about the 20th.

Q. February 20th? A. Yes.

Q. How do you fix that date?

A. My son was born February 16th.

Q. What?

A. My son was born February 16th and I had a cigar and I gave it to Colonel Hand.

Q. You had a what?

A. A cigar and I gave it to Colonel Hand, and,

(Testimony of Henry Lester Pineda.)

Mr. Goddard had offered him a box of golf balls and he refused. So I said, "I am going to offer him a cigar."

He said, "He won't take anything from anybody."

But I gave him a cigar and he took it.

Q. You gave it to him?

A. That is why I can remember that date.

Q. That was the date your child was born, is that right?

A. Not that date. I said around that time.

Q. It was on the 16th of February?

A. My son was born the 16th. This was a few days later.

Q. In other words, it was so close to the 16th you were still carrying cigars that you passed out when the baby was born, isn't that right?

A. I left some in the plant. I left some in the plant. [757]

Q. Did you still have the golf balls?

A. I didn't give him the golf balls.

Mr. Hippeli: We will see if we can find the golf balls.

Mr. Faulkner: I do not need any help from Mr. Hippeli or Mr. Pratt either.

Q. Mr. Pineda, there can be no question, then, that this was in the latter part of February, 1942?

A. Yes.

Q. And the order was for 8,000 pounds of butter?

(Testimony of Henry Lester Pineda.)

A. I said from about 8—800 to a thousand pounds.

Q. From 800 to a thousand pounds? Now, which was it?

A. No, I meant—let's see now. The only way I can judge it——

Q. I just want you to tell me the number of pounds of butter involved in the answer.

Mr. Hippeli: Let him complete the answer.

The Court: Let us proceed orderly. Let him answer the question.

Mr. Faulkner: I move to strike out what he has already said. He has not attempted to answer the question.

The Court: Whether it goes out or not he is entitled to complete his answer.

The Witness: I will say from about eight thousand to ten thousand pounds is what I meant to say.

Mr. Faulkner: Q. And you still mean to say that? A. Yes.

Q. So the order was from eight thousand to ten thousand pounds of butter? A. Yes. [758]

Q. Who was the butter to go to?

A. I don't know.

Q. Did you ever see the purchase order for the butter? A. No.——

Q. Now, some time in connection with that butter the Colonel came in there, is that right?

A. Yes.

Q. How many men did he have with him?

(Testimony of Henry Lester Pineda.)

A. About two men.

Q. What were their names?

A. I don't recall their names.

Q. What was the name of the man who remained in the butter room? A. I don't know.

Q. What did he look like?

A. Just an army man. That is all I know. I had my own work to do. I had no time to be looking at people. We were kept busy around there. We didn't go around talking to everyone who came in.

Q. Was he a tall man?

A. Well, around close to Colonel Hand's height. I know he was taller than I am.

Q. What was his rank?

A. I believe someone referred to him as a sergeant.

Q. What did you refer to him as?

A. I never talked to him.

Q. You never talked to the man at all?

A. No.

Q. Before the butter ever got into the cutter room were you present—you present—when the Colonel made a sample of some butter?

A. Yes.

Q. Where was that?

A. That was outside, about 20 or 30 feet from Ruby Goddard's office.

Q. Where was the butter?

A. It was in the cooler.

Q. In the cooler? A. Yes. [759]

(Testimony of Henry Lester Piñeda.)

Q. Did the Colonel go in the cooler?

A. No, I took it out.

Q. You took it out? A. Yes.

Q. The first butter you took out where did you get it? A. From the cooler.

Q. You mean one of the freezers that you have drawn on the blackboard?

A. Not the freezer, but the cooler. We only had one big freezer and the small freezer.

Q. These transactions were on Townsend Street?

A. Yes.

Q. Will you come down to this board, Mr. Piñeda, please? Take the letter "P" with the figure 1 and show me there——

The Court: Get on the other side of the board so the jurors will be able to see, and use the pointer, so the jurors will be able to see what you are talking about.

Mr. Faulkner: Does that take the reflection off?

Q. Will you put the letter "P-1" where you first saw Colonel Hand on the morning when he came in to look at the butter? Where was he? Just put a mark on the place.

A. I didn't say the morning. I just said the day.

Q. Well that day?

A. I saw him right over here (indicating).

Q. Will you put the letter "1" there? Now, where were you? A. I was back here.

Q. Put the letter "P-2." What were you doing on that morning before Colonel Hand came in?

(Testimony of Henry Lester Pineda.)

A. I was helping Mr. Menges in the candling room.

Q. What?

A. In the candling. I was outside the bench.

Q. On that morning in February of 1942 or any morning, or any afternoon while you were employed at Nye & Nissen, 95 per cent of your time was spent in the egg breaking room, isn't that correct? A. No.

Q. How much of your time was spent in the egg breaking room?

A. It all depends on what part of the year it was.

Q. What were you employed as in the firm of Nye & Nissen?

A. In charge of the egg breaking room and I was supposed to help in the butter room.

Q. Were you still employed in the egg breaking room in 1942? A. Yes.

Q. Isn't it a fact, Mr. Pineda, that most of your time was spent in the egg breaking room, and when you had time to spare you were over in the candling room talking to the girls? A. No.

Q. Isn't that one of the differences between your employers and you, the time you were spending out of the egg breaking room over there talking to the girls in the candling room?

A. No. We did have a few arguments about it, but the only place you can drink water—clean water—would be in the candling room.

Q. And you were always thirsty, is that right?

(Testimony of Henry Lester Pineda.)

A. No, at ten o'clock there was a rest period and at two-thirty there was a rest, and I would go in and if I had any leakers to do I would go in there, and when Harry Smiley came from Petaluma my job would be to go in here and give this to Harry Smiley [761] and help him load the truck.

Q. What percentage of your time from day to day was spent in the egg breaking room?

A. In the egg breaking room in the months, I would say, from March to maybe July, the beginning of July, most of my time, unless we had an order where I was taken out.

Q. That was from March until July?

A. From March until July.

Q. From July until September where was most of your time spent?

A. Most of my time would even be spent helping in the butter room on the floor here or helping Ed Menges.

The Court: It is time for a recess. The jurors may be excused.

(Recess.) [762]

Afternoon Session, Friday, January 24, 1946
2:00 p.m.

The Court: Waive the roll call stipulating and agreeing all the jurors are present? Proceed.

Mr. Faulkner: Your Honor, at this time, I should have made this motion the moment that Mr. Hippeli had finished his direct examination. I move to strike all of the testimony of the witness

Pineda, in relation to every act and transaction in which he has testified where the stamp, if a stamp was involved, the eggs if eggs were involved, the butter if butter was involved, the precise order where an order was spoken of, be stricken from the record upon the grounds that will be stated in a written motion to strike which will more fully amplify the oral motion now and which we spoke of at the conclusion of court yesterday and a copy of which I will serve on Counsel for the Government. Is that satisfactory to you, Mr. Hippeli?

Mr. Hippeli: Yes.

Mr. Faulkner: The motion will be made in that form and our authorities submitted to the Court. The Court will rule on it.

Mr. Hippeli: Yes.

Mr. Faulkner: And I do not waive that objection by cross-examining the witness.

Mr. Hippeli: That is agreeable.

Mr. Faulkner: That is agreeable to your Honor; it is [763] understood as a proper method of procedure.

The Court: The record will show the motion is submitted, will be submitted in writing.

Mr. Faulkner: Yes.

The Court: Therefore there will be no necessity at this time for the Court to pass on it or make any ruling.

Mr. Faulkner: Yes.

The Court: Proceed.

Mr. Faulkner: We had that blackboard all fixed,

your Honor, and we sat in various parts of the jury box, the bailiff and I——

The Court: Can the jurors see the blackboard?

The Jurors: Yes.

The Court: Very well. Take the pointer and stand on the side.

Mr. Faulkner: May I ask the Court to ask the Jury is there are any highlights or reflections on the board.

HENRY LESTER PINEDA,

recalled.

Cross Examination—(Resumed)

Mr. Faulkner: Q. Mr. Pineda, will you come down to the blackboard, please? I will ask you your best opinion and recollection of the distance between the Townsend Street entrance of these premises which you have drawn and Bluxome Street? A. I would say a half a block. [764]

Q. Would you say it would be comparable in distance to the Post Office Building in which this court room is located?

The Court: Do you understand the question?

The Witness: No, I do not.

Mr. Faulkner: I will reframe it.

Q. Townsend Street runs to a street or alley called Bluxome. Now, this Post Office runs from Mission Street to a street or alley called Stevenson Street, which is an alley midway between Mar-

(Testimony of Henry Lester Pineda.)

ket and Mission. Now, Bluxome is a street midway between Townsend and the next street north, isn't it? A. Yes.

Q. Is the distance from Townsend Street to Bluxome Street about approximate to the distance from Mission Street to Stevenson Street?

The Court: He may not be familiar with that street. I think it would be well to try to get the measurement in some other way. You are talking about streets and possibly he is not familiar with it.

Mr. Pratt: If the Court please, I think the record will show what the length of the building is. Doesn't it? This morning wasn't it mentioned?

The Court: I don't know.

Mr. Faulkner: The witness has given it on direct examination, he has given his opinion.

The Court: Read the question.

(Question read.) [765]

The Court: That is a street that possibly he is not familiar with.

Mr. Faulkner: Q. How often have you been in this building in the last three months?

A. I have been here about four days, four or five days a week for the last two weeks.

Q. How many in the last three months?

A. Three months?

Q. Yes?

A. I would say about three or four times more.

Mr. Faulkner: Q. Three or four?

Mr. Pratt: Three or four times more?

(Testimony of Henry Lester Pineda.)

Mr. Faulkner: Q. A week?

A. No, that is during the whole length of time.

Q. During the whole length of time? You have been here every day this case has been on?

A. Yes.

Q. You know where the Post Office Building is, don't you? A. Yes, Seventh and Mission.

Q. Do you know where Mission Street is?

A. Yes, one block south of Market.

Q. Do you know what street is out here? Assume the name of that street is Stevenson; is the distance between Mission and Stevenson Street, the street to the north of this building, about a similar distance between Townsend and Bluxome?

A. When I say a half a block it is because Bluxome Street is one entrance to Nye & Nissen and Townsend was the other, that was the next place. I believe Harrison Street was the street next up there. [766]

Mr. Pratt: What is the purpose of this, if the Court please? It seems to me we are getting nowhere. If Counsel will tell the size of that building we will agree that that is the size.

Mr. Faulkner: I submit when a witness has testified to the size of a building, to the dimensions on his direct examination I am entitled to get it more accurately than he gave it there.

The Court: But you have already——

Mr. Faulkner: Your Honor, may I be heard? I don't know of a better way for the witness and a fairer way for the witness to indicate to the Court

(Testimony of Henry Lester Pinela.)

and Jury the size of a building than by comparing it with the Post Office Building which fronts a half a block. I just asked him a simple question, was it about the length of the Post Office Building.

The Court: It is rather interesting. Perhaps you know better than I the shape and contour of this Post Office Building, how it runs.

Mr. Faulkner: Yes, your Honor, because it runs from a street to an alley. In other words, the Post Office Building runs from Mission Street to Stevenson.

The Court: All right. I will take the witness over myself.

Mr. Faulkner: All right. Would your Honor do that? That is all I want to get, a fair representation of size.

The Court: Q. Do you know how long this building is?

A: No, I don't. [767]

Q. Approximately. You said half a block.

A. A half a block is maybe a block is close to 300 feet. It would be here, about one hundred maybe and a quarter, 150, 175.

Q. How wide is it, about?

A. As I said before, the way I can say that, it depends on how many trucks we used to back in at night in the space at the entrance of the building.

Q. Would you give us your best estimate?

A. Three or four trucks with a big truck and trailer. I never did measure it any other way.

Q. 50 feet, 100 feet, or 200 feet?

(Testimony of Henry Lester Pineda.)

A. I believe, I would say, from 50 to 75 feet.

The Court: Proceed.

Mr. Faulkner: Q. Mr. Pineda, when you would stand in a position such as you have indicated there by the letter "P" how far would you be from Mr. Goddards office up near Townsend Street?

A. I would say about 75 feet or so.

Q. Wouldnt it be nearer 200 feet, Mr. Pineda?

A. Two hundred, no.

Q. Well, about one hundred eighty-five?

A. No, I would say around one hundred would be more or less correct.

Q. More or less correct? A. Yes.

Q. This "BRK Room," that is the egg breaking room? A. Correct.

Q. The freezers 1, 2 and 3—where is the butter located? A. Butter located?

Q. Where is it taken to the butter room?

A. No. 2 and No. 3. [768]

Q. Do you remember testfyiing to an occasion when Colonel Hand came in there to inspect some butter, do you remember that? A. Yes.

Q. Where was the butter?

A. The butter was in No. 2.

Q. You marked "P-3" where the butter was when Colonel Hand came in to Nye & Nissen to inspect it. Did you see it there?

A. Yes, I helped place it there.

Q. When did you place it there?

A. I would say about two or three weeks or

(Testimony of Henry Lester Pineda.)

more, well, maybe about a week, anyway, before Colonel Hand came in.

Q. Where did the butter come from?

A. I don't know. It was on the floor already when I placed it in there.

Q. You mean on the warehouse floor?

A. Yes, the warehouse floor.

Q. Who instructed you to place it into Freezer No. 2? A. Mr. Goddard.

Q. Now, how was it stacked?

A. We had it stacked the full length of the cooler.

Q. The length of the cooler. How many containers were there?

A. I don't know how many containers.

Q. How much weight of butter was in the containers, do you know?

A. I believe close to from 68 to 70 pounds.

Q. How many containers were there in that butter room that you had stacked some weeks before Colonel Hand came into the premises?

A. I don't know how many. [769]

Q. Were there five?

A. No, hundreds.

Q. There were a hundred?

A. Over a hundred.

Q. That had come in the week before?

A. Yes. We had—I am trying to figure out how many flats we had. I guess about three hundred. Three hundred cubes of butter, what we call cubes of butter, three hundred.

(Testimony of Henry Lester Pineda.)

Q. You mean that that was moved in there around a week before?

The Court: What do you mean by a cube of butter?

A. They call a cube a square, about sixty-eight pounds in a box. We call that a cube.

Mr. Faulkner: Q. Were they on the floor in the freezer room? A. No.

Q. They had been taken in on flats?

A. Yes. That can't stay there on the floor, it would take up too much room.

Q. There were about two or three hundred?

A. Yes.

Q. It had all been taken in there at the same time, is that correct? A. Yes.

Q. You can go back to the stand now if you will. Who aided you in taking that butter into the freezer room? A. Who did what?

Q. Who assisted you in taking the butter into the freezer room, if anyone?

A. From the floor into the cooler?

Q. From the floor?

A. Mr. Goddard and myself.

Q. You indicated before the recess that the letter "P" represented where Mr. Pineda was when Colonel Hand came into those premises?

A. That bottom "P?" [770]

Q. Yes, right near where it says "Breaking Room." A. Yes.

Q. Did the Colonel come in the back way or the front way? A. The front way.

(Testimony of Henry Lesle Bingham)

Q. When he came in who did he talk to?

A. I don't know who he talked to.

Q. When did you first talk to him?

A. I didn't talk to Colonel Hand.

Q. Pardon me? A. I didn't talk to him.

Q. Did he make any request of you at that time?

A. No, he did not.

Q. Did anyone make any request of you at that time to do anything?

A. My orders were before that time——.

Q. No. Did anybody make any request of you to do anything at that time in the presence of Colonel Hand? A. Mr. Goddard.

Q. What did he say to you?

A. He told me to take out the different churns of butter that we had already placed on some flats, on some skids inside the cooler.

Q. About two hundred?

A. I didn't say about two hundred, no.

Q. A moment ago you——

A. I said how much butter was in the cooler. I said about two or three hundred. I didn't take all that out at one time.

Q. A few moments ago you said a week before Colonel Hand came in you had placed about 200 cubes of butter in the freezer room? A. Yes.

Q. Was that all the butter that was in there?

A. They had some [771] other butter, but I didn't say that here.

Q. You didn't say that? A. No.

Q. Did Mr. Goddard tell you to do something?

(Testimony of Henry Lester Pineda.)

A. Yes.

Q. Where was Colonel Hand when he told you that?

A. Colonel Hand was where it says "Main Warehouse" where you told me to place that "P," that first "P" on there.

Q. That is where the Colonel was?

A. Yes.

Q. Where were you when Mr. Goddard gave the direction to you; did you still remain at the egg breaking room?

A. Oh, I was right outside. Before he started to walk down I started to walk up to meet him because he told me before that when Colonel Hand came I would help him with the butter out of the cooler.

Q. You would help him with the butter out of the cooler? Did you take some butter out of the cooler? A. Yes.

Q. Did you? A. Yes.

Q. How much did you take out of the cooler?

A. Oh, I would say, oh, about 25 or 30.

Q. 25 or 30 what? A. Cubes.

Q. Is that all you took out? A. Yes.

Q. Was Colonel Hand there when you took this out? A. Yes.

Q. How did you fix the number of cubes that you took out, did you make any record of it?

A. No.

Q. Is it just your best recollection, is that right?

A. Right.

(Testimony of Henry Lester Pineda.)

Q. When was this occurrence when you were by the breaking room and Colonel Hand came in and stood there in the position where [772] it says "Main Warehouse"; when was that occurrence? A. You mean what year?

Q. What year, month and day?

A. 1942, in February.

Q. What part of the year?

A. It is in February.

Q. How long did it take you to take the 25 or 30 cubes of butter out of the freezer room?

A. Oh, I would say about five minutes.

Q. Did anyone help you do that?

A. Well, these cubes, these samples were already on flats.

Q. I asked you if anyone helped you?

A. No.

Q. You did it all by yourself. Did anybody else take any other butter out of there at that time?

A. I don't know.

Q. Pardon? A. I don't know.

Q. Well, you were there?

A. I know, but as soon as I take it out I have to start opening up the cubes so the inspector can inspect it and I have my back to the cooler, I have to pay attention to see what the Colonel wants.

Q. Was the Colonel there when you were bringing them out for him? A. Yes.

Q. When you would bring these cubes of butter out of the ice house and began to open them what would he do?

(Testimony of Henry Lester Pineda.)

A. He would sample them.

Q. Right then? A. Maybe in a minute.

Q. Well, a couple of minutes? A. Yes.

Q. In other words, while you were opening maybe the second or third case he would be sampling the first case?

A. Well, I [773] have been——

Q. Is that right?

A. That butter had been out before——

Q. I am asking——

The Court: Just a moment.

The Witness: When we put that butter on the skids and took it out for samples that is taken out on the floor a day or so ahead of time.

Mr. Faulkner: Just a moment ago you said you had just left the freezer room and brought the butter out to Colonel Hand?

A. That is that day. You asked me a question——

Q. I just asked you what he did when you brought him the butter from the freezer room and you said he started to sample it? A. Yes.

Q. Now you remember he didn't start?

A. No, I didn't say that. You might put butter into the freezer and keep it there from the time it was delivered, but it was in there, that butter stays in the freezer and then—not the freezer, the cooler, put into the cooler so it won't be too hard to inspect.

Q. When was it taken out?

A. Might be a few days and it was placed back

(Testimony of Henry Lester Pineda.)

in the butter room, it might have been out a day or two, or three or four days.

Q. You put the butter into the freezer room how long before Colonel Hand was down there to make his inspection?

A. I placed it in the night before.

Q. The first handling you made of that butter was the night [774] before?

A. Not the first handling, no.

Q. When was the first handling of that butter by you before Colonel Hand came in to inspect it?

A. About a week.

Q. When did you next take it out of the cooler room?

A. About two days before, one or two days before Colonel Hand came.

Q. How did you know two days before when he would come?

A. I didn't know he would be there, but he came —my orders came from Ruby, he told me to be quite sure I took it out.

Q. You said you would take it out a couple of days before Colonel Hand came? A. Yes.

Q. Did you know two days before he actually came that he was coming in there? A. No.

Q. Then why did you take it out that day?

A. Because Mr. Goddard told me to.

Q. Five days after the first handling Mr. Goddard told you to take the butter out on the warehouse floor? A. Yes.

Q. How much butter did you take out then?

(Testimony of Henry Lester Finch.)

A. The same amount, from 25 to 30 cubes, samples.

Q. Why did you take 25 or 30 cubes?

A. Because those cubes are marked "Sample" on the box.

Q. Who marked "S-a-m-p-l-e" on the box?

A. Wherever they bought it from.

Q. Whoever they bought it from?

A. I guess so.

Q. After you took it out two days before how long did it remain on the warehouse floor?

A. For about a day and a half [775] or so.

Q. Then what was done with it?

A. Well, I believe Mr. Smith or somebody inspected it, tasted it, because I had marked the boxes inspected before, and then I was told to put it back into the cooler the night before so I put them back.

Q. You put it back? A. Yes.

Q. It remained in the cooler all night?

A. Until Colonel Hand came.

Q. You have testified that the night before Colonel Hand came you removed the butter from the main warehouse floor and put it back in the freezer? A. That was the sample cases.

Q. That is all that was on the floor, 25 sample cases? A. Concerning this butter, yes.

Q. The other remaining cases always remained in the freezer? A. Yes, in the cooler.

Q. Then the day that Colonel Hand came in you have a distinct recollection that 25 or 30 cases

(Testimony of Henry Lester Pineda.)

had been on the floor of the warehouse the day before and had gone into the freezer room that night? A. That is right.

Q. And had remained in the freezer room and on the morning of the day the Colonel came in there—— A. Some time in the afternoon.

Q. What time did you quit the night before?

A. About 5:30, I guess, or six.

Q. Mr. Pineda, when the Colonel came in there and you saw him [776] for the first time in the position we have marked there you then went back and got 25 or 30 cases of butter at the cooler?

A. Yes.

Q. Is that right?—— A. Yes.

Q. Did you bring out the same butter you had out the day before? A. Yes.

Q. Where was it? Was it in a separate part of the butter room? A. Yes.

Q. Did you select the butter?

A. I selected it before then, yes. [777].

Q. At the time those particular 25 to 30 cases or cubes of butter were selected, you personally selected the butter, is that right? A. Yes.

Q. And you brought it out then on the floor of the warehouse for the inspection of the colonel, is that right? A. That is right.

Q. So that when the Colonel came in the butter that he inspected was butter that had been selected by Mr. Pineda, the egg breaker for Nye & Nissen, is that right?

A. By Mr. Goddard's orders.

(Testimony of Henry Lester Pineda.)

Q. Pardon me?

A. Mr. Goddard gave me the orders.

Q. So Mr. Goddard gave you the orders of the particular cubes that Colonel Hand was to inspect in Nye & Nissen, is that right?

A. That is right.

Q. And he then accepted the butter which you had selected and proceeded to make the inspection, is that right? A. That is right.

Q. And he inspected it right then and there, didn't he? A. Yes, sir.

Q. And he tasted it right then and there?

A. Yes.

Q. Did he pass that butter?

A. He passed some of it. Some of it he rejected.

Q. How many cases of the 25 or 30 did the Colonel pass?

A. I don't remember how many he passed, but I think—well, he rejected about four different churn numbers.

Q. How many cubes did he reject?

A. Four. [778]

Q. Four cubes? A. Yes, four cubes.

Q. Did the 25 or 30 cases of butter represent 30 different churns? A. Yes.

Q. They did. Now, in this quantity of, say, 200 cases of butter there were 30 churns of butter in the 200, is that right?

A. Yes, that was left over.

Q. About how many cubes of butter would run to an average churn, Mr. Pineda?

(Testimony of Henry Lester Pineda.)

A. I would say around ten.

Q. About what? A. About ten.

Q. From the time you brought the cubes of butter out from the ice house until the Colonel had finished his inspection on the day you saw him there how much time elapsed?

A. Do you mean how long it took Colonel Hand to inspect?

Q. How long a time elapsed from the time you brought the butter out on the floor of the warehouse to the time the Colonel was finished with his inspection of the butter?

A. About an hour, I guess.

Q. About an hour; were you working there with the Colonel? A. Yes.

Q. Were you opening the cases for him?

A. Yes.

Q. Were you conversing with him?

A. No, I didn't say much to him.

Q. Pardon me?

A. I didn't talk to him much.

Q. Did you know at that time how many pounds of butter were being ordered? A. No. [779]

Q. When did you learn that 8,000 to 10,000 pounds of butter were being inspected by the Colonel that afternoon? A. I didn't say——

Mr. Pratt: I object to that. The testimony does not so indicate.

Mr. Faulkner: Your Honor, the testimony is as clear as can be. This is an order from eight to ten thousand pounds of butter.

(Testimony of Henry Lester Cheda.)

The Court: He says he does not know anything about an order.

Mr. Faulkner: May I have the beginning of his cross-examination read, your Honor, and I ask the witness not to volunteer.

The Witness: I said——

The Court: I will ask the reporter to read it if there is any question about it.

Mr. Faulkner: Yes. Your Honor will recall one of the first questions I asked was the quantity involved, and the witness stuttered a little and said eight hundred to a thousand pounds, and then he said, "I am wrong about that. The amount of butter involved was 8,000 to 10,000."

The Court: That was not involved in any order, if I have followed the testimony.

Q. Did you know anything about any order with relation to this butter?

A. No, I said how much butter we cut that day.

Mr. Pratt: That is what the question and answer related to, what was cut.

The Witness: I said "cut."

The Court: If I am in error you are entitled to have the record.

Mr. Faulkner: When I have time we will get the record and I will pursue this further when I have it.

The Court: At any rate, the jury heard the testimony. If there is any question about it, I was trying to clear the matter up.

(Testimony of Henry Lester Pineda.)

Mr. Faulkner: Q. And the Colonel was finished, is that right? A. Yes.

Q. And of the 30 cases you had brought out on the floor of the warehouse he had rejected four or five, is that right? A. That is right.

Q. What churns did he reject?

A. I don't know.

Q. What?

A. I don't know what churns he rejected.

Q. What numbers were on them?

A. I don't remember now. That wasn't the first time any churns were rejected.

Q. Pardon me?

A. That wasn't the first time churns were rejected.

Q. I didn't ask you that Mr. Pineda. I asked you what the number of the churns were that were rejected? A. I don't remember.

Q. Did you know at the time?

A. Well, certainly. [781]

Q. How did you know?

A. Because the list was given to me.

Q. What list was given to you?

A. Mr. Goddard gave me certain numbers to make sure the Colonel wouldn't get those.

Q. Was that in writing? A. Yes, it was.

Q. So then at the time Colonel Hand was in there the samples that were brought out there were hand picked by you under the direction of Mr. Goddard? A. Yes.

Q. Is that right? A. That is right.

(Testimony of Henry Lester Fitch.)

Q. Now, after the Colonel left you started to cut the butter, is that right? A. No.

Q. When did you start cutting butter?

A. The following morning.

Q. How much butter did you cut?

A. I don't remember how much butter we cut, but I know we had five or six cubes of butter left before the Colonel came that we did not cut.

Q. How big was the order that was cut for the Army that was supposed to be represented by butter that Colonel Hand had inspected?

A. I don't know.

Q. When you referred to 8,000 to 10,000 pounds of butter cut in about February, 1942, what were you referring to?

A. Well, I was referring to the amount of butter we cut that day.

Q. What day would that be?

A. That would be some time in February, 1942.

Q. Was it the day after the Colonel was there?

A. Yes.

Q. Was it in relation to filling the order that the Colonel had made an inspection?

A. Some of it, yes. [787]

Q. How much of it? A. I don't know.

Q. Was it one pound? A. No.

Q. Was it nine-tenths of the butter that you cut that day?

A. I wouldn't know how much of it.

Q. How much were you cutting before that day?

A. I don't know.

(Testimony of Henry Lester Pineda.)

Q. When did you start cutting butter?

A. Seven o'clock in the morning.

Q. The next morning?

A. The next morning.

Q. Who was there at seven o'clock in the morning?

A. Mr. Menges, Mr. Goddard and myself, as far as down in the butter room.

Q. How much butter did you cut before Colonel Hand or any Army inspector came in?

A. I couldn't tell you how much butter we cut. We have no way of checking how much butter we cut. It is just brought into the butter room while we are running the butter machine. The butter is brought in and we cut it.

Q. The Army men came in around eight o'clock?

A. At eight o'clock.

Q. You came in at seven o'clock? A. Yes.

Q. What did you have to do to prepare the butter machine to start operations that day?

A. The butter has to be put into pre cutter and cut. The girls have to get their wrappers and set themselves up.

Q. What persons participated in the cutting of the butter on the day following the inspection of the butter by Colonel Hand?

A. I did, Mr. Menges—Mr. Goddard, he put some of the butter [783] down and took some away. I believe Mary Bacigalupi did some of the cutting, and the girls—I can't remember who were wrapping it or how many.

(Testimony of Henry Lester Pineda.)

Q. How far were you advanced by the time the Army men came in, Mr. Pineda, in your butter cutting operation?

A. We had cut everything but about, like I said before, 5 to 7 cubes of butter.

Q. You had cut from 5 to 7 cubes of butter?

A. Everything but. All the butter that was put in the tray—back in the butter room we had cut all but about 5 to 7.

Q. How much had you cut? Not how much remained, but how much had you cut?

A. I don't know. I was on the bench.

Q. Was it around a cube of butter by 8 o'clock?

A. Not a cube. It was in the hundreds of pounds.

Q. How many?

A. In the hundreds—maybe five, four, two hundred—I don't know. You see, I don't stay outside and keep track of how many boxes come out. I am at the machine.

Q. I mean 68-pound cubes that came in, how many of those cubes had been cut by the time the Army inspector came in?

A. I suppose around 25 or 30.

Q. Thirty? A. About that.

Q. In one hour you had set up the butter machine, you had cut the butter in the butter room, had taken it in, and started feeding it into the butter cutting machine, and you had cut 30 times 68 pounds of butter by the time the Army inspector [784] arrived on the premises is that right?

(Testimony of Henry Lester Pineda.)

A. Something like that.

Mr. Pratt: I object to that. That is not what he said.

Mr. Faulkner: He just now said it again.

Mr. Pratt: He said 25 or 30. You now say 30. There is a difference of five, which is 20 per cent.

Mr. Faulkner: It depends on which figure you take. It might be 16 per cent.

Mr. Pratt: That is right.

Mr. Faulkner: That is about right.

The Witness: Something like that. I couldn't tell you the exact amount of cubes because I wasn't busy putting them on the pre-cutting machine; I was running the butter machine.

Q. Mr. Pineda, we will take Mr. Pratt's minimum figure of 25. In that operation you were packing butter in 30-pound cases, weren't you?

A. Yes.

Q. So that when the Army inspector came in you had somewhere in the neighborhood of 50 cases of butter cut, is that right?

A. I don't know how many we had cut but we had them cut.

Q. When he came someone in Nye & Nissen asked him to pass as inspector as to weight 50 cases of butter that had been cut before he came into the premises, is that right? A. No.

Q. What was it Mr. Goddard said to him in respect to the 50 cases of butter that you had cut between seven and eight o'clock?

A. That butter was for our own use.

(Testimony of Henry Lester Pineda.)

Q. That was for your own use?

A. Yes, sir. [785]

Q. What was done with that butter?

A. Some of it was taken into the cooler, and we left part of a tray outside.

Q. Did you take any into the cooler?

A. No.

Q. Did you leave it outside? A. No.

Q. In other words, during this period you were in the butter room? A. Yes, sir.

Q. And you were working the butter machine, is that right? A. That is right.

Q. Did you work the butter machine all that day? A. Most of the day.

Q. Did you work it during the entire time the Army order was being filled? A. Yes.

Q. When you were cutting the first 50 cases of butter before the Army man came you had adjusted the nozzle of the butter machine in order that it would cut certain butter in certain weights, isn't that correct? A. That is right.

Q. Had you occasion between the time you first adjusted that nozzle to change the nozzle at any time before the inspector came on the premises?

A. No.

Q. In other words, Mr. Pineda, am I correct in this, that you had such proficiency in butter cutting that you set that butter machine only once in the beginning of the operation and you never had to change it again?

A. You talk about the nozzle.

(Testimony of Henry Lester Pineda.)

Q. The nozzle?

A. The nozzle to me is what we put in front of the machine to cut a certain—either one-pounds or two-pounders. [786] But that doesn't regulate the weight of the butter.

Q. The nozzle is what regulates the weight of the butter, isn't it?

A. No, we have a little wheel on top.

Q. On top of the nozzle?

A. On top of the nozzle.

Q. The nozzle is a fixture, isn't it?

A. Yes, but we put in front of that—the nozzle—we put some wirings.

Q. How do you regulate the weight of the butter? A. We turn the wheel on top.

Q. The wheel is on top of the nozzle, isn't it?

A. Yes.

Q. Now, did you have occasion to adjust that wheel on the top of the nozzle? A. Yes.

Q. How many times did you adjust it before the inspector came in order to determine whether you were actually cutting a particular quantity of butter?

A. Like I always did. I spotted butter about every twenty cuts. I spot weigh it every twenty cuts.

Q. Would you then adjust the nozzle after each weight?

A. If it needed it. If it didn't need it I let it go.

Q. On that particular morning how many times did you adjust the valve on top of the nozzle be-

(Testimony of Henry Lester Pineda.)

fore you had got it in the position to cut two-pound prints of butter or rather, one-pound prints of butter?

A. You mean when I first started cutting the butter or once the butter was already being cut?

Q. You started at seven in the morning?

A. Yes.

Q. The inspector came at eight?

A. Yes. [787]

Q. How many times between 7 and 8 did you adjust that nozzle?

A. I can't tell you how many times. It all depends on when it needed it. That was my job. I cut butter about nine years. I can't tell you how many times a certain day I turned the nozzle.

Q. On a normal day when you are starting an operation to cut butter with your 8 or 9 years' experience cutting butter how long did it take you to adjust the nozzle or the gadget on top of the nozzle so it would cut the pound of butter you needed?

A. Just take a turn of my wrist if it was only an ounce difference. Say I wanted two pounds. One ounce either way is all we have to do it.

Q. That is what I want to know. What would you have to do with it?

A. Just turn it once with my wrist.

Q. How much did you turn it?

A. Depending on the weight.

Q. All that enters into the turning of this screw

(Testimony of Henry Lester Pineda.)

—what do you call that on top of the nozzle that you adjust in order to fix the weight of the butter? What is the name of it?

A. I don't know the name.

Q. Pardon me?

A. I don't know the name of it.

Q. It is like——

A. Like a faucet.

Q. Like a faucet only wheel shaped?

A. No, it is the same shape as a faucet.

Q. The same as a faucet. How many pounds of butter do you have to cut in a normal butter operation before you can adjust the weight of your butter accurately?

A. It all depends. [788] When you clean the butter machine at night you take the nozzle out, which regulates the weight. When you take it out, if you turn it too many times, naturally the next day you have to turn it back to get it in action again. I don't know how many times I would have to turn it to regulate it, but I would have to pass butter through to find out how much it weighed.

Q. About how many pounds of butter would you pass through before you were getting the weight regulated properly?

A. I would say about 20 pounds.

Q. When you were cutting this butter Mr. Goddard told you, and at the same time told the inspector, was for your own use, what weight of butter were you cutting then?

A. Still the one pounds.

Q. One-pound prints?

(Testimony of Henry Lester Pineda.)

A. One-pound prints.

Q. 16 ounces?

A. No, we cut them lighter.

Q. What? A. 15 ounces.

Q. 15 ounces? A. Yes.

Q. How do you know they were 15 ounces?

A. Because I weighed it. Two pounds were two ounces short; so one pound would be more or less one ounce short.

Q. How would you know they were two ounces short?

A. The scale has one ounce either way. The scale has one ounce either way. So when I put the butter on the scale I always put a little piece to balance it off to make it two ounces. The scale scales butter only one ounce either way, but in order to do that I put a piece of butter to make up that difference of an [789] ounce, in that I could save two ounces. The other way I could only save one ounce.

Q. How do you mean you put a piece of butter on the scale?

A. I put a little piece of butter on the scale next to the weight.

Q. You put a piece of butter on the scale next to the weight?

A. Yes. Might as well say another ounce.

Q. In other words, the weight on that scale was a metal disk? A. Yes.

Q. That balanced against the butter as it went on the scale, is that right?

(Testimony of Henry Lester Pineda.)

A. That is right.

Q. And that weight was accompanied by an ounce of butter?

A. Yes. I just put—before they came I just put enough butter on the bottom of that scale to make it the ounce.

Q. How would that make it an ounce?

A. I would just weigh up an ounce.

Q. The scale had a balancing tin, didn't it?

A. Yes.

Q. And it had the word "under" didn't it?

A. Under and over.

Q. Under and over? A. Yes.

Q. In other words, if the butter did not reach the balancing point or go over it would not meet the weight, would it? That is right, isn't it?

A. What did you say?

Q. In other words, you have this scale. At one side is the butter and one side are the weights?

A. Yes.

Q. On the side with the weights you have an extra ounce of butter? [790]

A. No, the other side.

Q. Where did you have the extra ounce of butter?

A. Where I used to place the butter to be weighed.

Q. Right here where the butter goes on, is that right?

A. Yes. Not where the weight is.

Q. How did you put that ounce of butter on?

(Testimony of Henry Lester Pineda.)

A. I just had a piece and just placed it on there.

Q. On the under part or the over part?

A. Sometimes it was on the top and sometimes under. When the inspector was there I placed some of it under, and then when they came I just hit the scale hard and it came off.

Q. That would be embarrassing, wouldn't it?

A. No, I could see the man in front of me all the time. I had my back to the wall. Nobody could stand in back of me without me knowing it.

Q. When the inspector from the Army is in there watching the butter cut he stands right by that scale?

A. Yes, but he has to come in front of me. I have to see him. He can't creep up behind me.

Q. When the man was inspecting this particular load of butter I mentioned—— A. Yes?

Q. You were up there feeding the butter into the butter cutting machine, weren't you?

A. At times I was. Sometimes I was and sometimes I was not.

Q. But on the day of this particular order that you testified this morning——

A. Not the whole order. [791]

Q. ——your province in this job was feeding the butter into the butter cutting machine, wasn't it?

A. Not all the time, no. I said I worked on the butter machine all the time but I didn't say I stayed at the same job all the time.

Q. Didn't you say this morning on this occasion

(Testimony of Henry Lester Pineda.)

you were feeding the butter into the butter cutting machine? A. Not the whole day.

Q. When you were feeding the butter into the butter cutting machine who was regulating the nozzle and weighing the butter?

A. I was regulating the butter and Mary Bacigalupi would weigh it.

Q. While you were feeding the butter into the machine you were regulating the nozzle also?

A. Yes, I did.

Q. Is that right?

A. I would still reach over. It was right next to me, because I knew how much I turned it.

Q. Will you draw that butter room for me, please?

The Court: Now, wait just a moment. Let him familiarize the Jury with what he has done there.

Mr. Faulkner: Yes, I will.

The Court: In his own way, to clear it up.

Q. What is this that you have drawn here? Tell the Jury about it?

A. This is the butter room (indicating an illustration on the blackboard). This room we used for a breaking room, too, but when we used it for butter we put everything in it—all the machinery and apparatus that we had for butter in the [792] breaking room.

Mr. Pratt: A little louder, please.

The Witness: We used this room for a breaking room, too. You see, this is two rooms, and when we cut butter we take all the apparatus we have from

(Testimony of Henry Lester Pineda.)

the breaking room and put it into this room over here (indicating) that is called the breaking room. And this had a steel plate—this is the plant here—a steel plate would come in here as far as here, and we would run flats of butter almost up to here to the pre-cutting machines. This is the pre-cutting machine. You put the butter here and it cuts in into nine pieces. You run it all the way back here. After it was cut, the fellow who was working the machine there would reach over here and place it into the worm. Here is about the worm here. That is more or less. And when it would come out of the worm it would go onto this belt. The girls here would pick it off, round it off, put it back on the belt, and the girl here would pack it up, put it on a roller, and send it down. This is close to the wall (indicating). I think I left too much space.

Mr. Faulkner: Q. Mr. Pineda, the butter comes in where I am pointing, is that right?

A. That is right.

Q. Let us put "Entrance." Put "B.E." for Butter Entrance. And then over here there is an opening, and that is where the butter goes out on the roller, is that right? A. Yes.

Q. When the butter is on the roller is it in a carton or in a [793] tissue paper wrapping?

A. In a carton.

Q. Then that is the carton exit, is that right?

A. (The witness indicated on the blackboard.)

Q. How large was that opening where the exit of the cartons is, do you remember?

(Testimony of Henry Lester Pineda.)

A. About this high (indicating).

Q. Is it about the width of the entrance to the Jury box between post and post or between the marble and the marble?

A. I would say close to post to post.

Q. How large is the entrance over here (indicating)?

A. A little bigger than the flats. I don't know how wide our flats are. From over here to about a foot or further.

Q. About a foot beyond. About the linoleum here, about one square of linoleum back to the wall?

A. I coldn't say exactly.

Q. I mean approximately that?

A. Approximately.

Q. The place where the pre-cutting was done on the morning Colonel Hand was there in February, within a day or two of the time your child was born it was cut over here, is that right?

A. Yes, pre-cut.

Q. Did you do that cutting?

A. No, they had someone else. Who I don't remember.

Q. Was it a man or a woman? A. A man.

Q. A man? A. Yes.

Q. There is a machine some place and you feed the precuts of butter into the machine, isn't that right? A. Yes.

The Court: Speak up so the reporter will be able to hear [794] you, also the Jury.

The Witness: Yes.

(Testimony of Henry Lester Pineda.)

Mr. Faulkner: Q. Where is the nozzle on the machine?

A. The nozzle is just right at the end. Here is the worm. That would be—probably working on the machine here it would be just so far away.

Q. From the place where the precuts of butter went into the machine—withdraw that. Do the precuts of butter from the machine go into the side or the end?

A. They can go into any part of the precutting machine.

Q. There has to be a container for those precuts of butter does there not?

A. What do you mean a container?

Q. A container to put them in in order that they will slide through the machine. That is the screw in it that shoves them out.

A. This is a flat table, and it has the wire around here. When we put the butter machine here and crank it, it keeps pushing the butter back, and when it comes to the front it hits the boards we have here. It runs the machine back. When it comes back I can get it from that side. When it is forward I can get it from the end.

Q. Is the precutting machine part of the machine that cuts the one pound cubes?

A. No, it is not connected. We just push it up against it. It is a different table. It didn't come with the machine.

Q. That has wires on it?

A. We cut it with wires. [795]

(Testimony of Henry Lester Pineda.)

Q. All cutting is with wires? A. Yes.

Q. After this process or cut they are fed into the machine like a hamburger steak into a meat grinder? A. That is right.

Q. Do you feed it from the top?

A. You mean the worm?

Q. Yes? A. From the top here.

Q. That is the work that you were doing, wasn't it? A. Not all the time, no.

Q. But you were doing that work?

A. I did some that day, yes.

Q. Will you describe to me how you would feed the butter into the worm, adjust a screw on top of the nozzle, and weigh the butter all at the same time?

A. I didn't say that. I said when I am up here I can't be weighing it, but when I am up here I can adjust the nozzle.

Q. When you are up here adjusting the nozzle can you also be adjusting the feeding of the butter into the machine?

A. Yes, I can be adjusting the feeding of the butter into the machine.

Q. This precut butter? A. Yes.

Q. Is that what you were doing?

A. Not all day long. At times, yes.

Q. Were you doing that between seven and eight in the morning? A. No.

Q. What were you doing between seven and eight in the morning?

A. I was cutting the butter over here.

(Testimony of Henry Lester Pineda.)

Q. You were cutting it? A. Yes.

Q. Who was running the nozzle?

A. I can't remember who was [796] running the nozzle, but we had some man running it.

Q. Who was precutting the butter?

A. I don't remember.

Q. Who was wrapping the butter?

A. The girls.

Q. What girls?

A. Oh, I can't tell you who was there that day exactly because we didn't keep the same type of girls all the time.

Q. You always remember when Mr. Goddard was any place?

A. Yes, Mr. Goddard—the whole year round I would see Mr. Goddard. You asked me how often I do this. I can always tell you the whole year round. You say that is not a definite answer. So I tried to place a certain time when Mr. Goddard was there.

Q. You saw him in the butter room that day?

A. Yes.

Q. He was not in charge of the butter room?

A. No.

Q. He had nothing to do with butter?

A. Oh, yes, he had. He wouldn't always tell me what to do. He just came down there to help maybe the fellow to precut, and he comes and takes off the faucet, but he doesn't stay there all day.

Q. You remember he was there that particular day?

(Testimony of Henry Lester Pineda.)

A. Yes. Not the whole day but he does come down. [797]

Q. You do not remember the name of any single employee definitely in that room on that particular day?

A. Yes, I can remember some of the girls that were there. I can't say all the girls, but there was Mary Bacigalupi, there was Billie, we called Marie Valdez. I think we had Juanita there and some more.

Q. At 7 o'clock in the morning when you started distributing the work, how was the work distributed between you and Mary and Juanita and Marie?

A. They were wrapping butter and I had charge of the machine.

Q. Where was Mr. Goddard?

A. Mr. Goddard was on the floor and when I was working there he would come over and talk to me and tell me what to do. He wasn't doing any work except bringing in butter.

Q. What was Mr. Menges doing?

A. He was helping around there. Before we started we had——

The Court: Just a minute. You must speak up.

The Witness: Well, before we started the machine had to be placed here, it is not a stationary machine, you move it from one place to another. When we put it on the breaking room we had to shove most of it into the other part of the butter room. At that time we had to make sure, it has a little groove here, that that fits exactly. Mr. Menges

(Testimony of Henry Lester Pineda.)

got some of the big cartons to take some butter and help us stripping the butter.

Mr. Faulkner: Q. Have you finished?

A. Yes. I helped him [798] on the different odd jobs there, whatever Ruby told him to do.

Q. Did you hear Mr. Goddard tell Mr. Menges on the day of this particular order to do something?

A. No.

Q. Have you any distinct recollection of Mr. Menges participating in this order at all?

A. Yes.

Q. And he participated in the manner you have just described? A. Yes.

Q. Now, will you go back to the stand. Who selected the butter that you ran on this morning between 7 and 8?

A. Who put it out on the floor, who took it out of the cooler?

Q. Who selected it?

A. Ruby told me which butter to use.

Q. Which butter did he tell you?

A. Some of the cubes, some of the churn numbers that Colonel Hand rejected.

Q. You had written them out on a piece of paper?

A. Well, I had it, yes, because when I went into the cooler to take out some butter I had to make sure none of that churn would get on the flat.

Q. On this occasion how many of the 200 cases of butter, 200 cubes of butter that you had moved into the——